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SUN COAST VENTURES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BARBARA HUBBARD, Plaintiff, v. SUN COAST VENTURES dba TACO BELL #002800; RICHARD B. ARMSTRONG CO TRUSTEE of THE ARMSTRONG REVOCABLE INTER-VIVOS TRUST DATED OCTOBER 28, 1983; JOYCE L. ARMSTRONG CO-TRUSTEE of the ARMSTRONG REVOCABLE INTER-VIVOS TRUST DATED OCTOBER 29, 1983, Defendants.	**Case No. 08CV1109 LAB JMA** **ANSWER TO PLAINTIFF'S COMPLAINT AND NOTICE OF AFFIRMATIVE DEFENSES**

Defendant, Defendant Sun Coast Ventures (identified in the Complaint as "Sun Coast Ventures dba Taco Bell #002800"), by and through its attorneys in this regard, hereby responds to the Complaint of Plaintiff, Barbara Hubbard (referred to hereafter as "Plaintiff"), and provides notice of its Affirmative Defenses as follows:

I. SUMMARY

1. In answering Paragraph 1 of the Complaint, Defendant states that Paragraph 1 consists of Plaintiff's characterization of her lawsuit to which no response is required. To the extent

a response is required, Defendant states that it owns and/or operates a Taco Bell brand restaurant at 1737 Sweetwater Road, National City, CA 91950 (hereinafter referred to as the "Restaurant"), and deny each and every remaining allegation.

2. In answering Paragraph 2 of the Complaint, Defendant states that Paragraph 2 consists of Plaintiff's characterization of her lawsuit and request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

II. JURISDICTION

3. In answering Paragraph 3 of the Complaint, Defendant admits that jurisdiction is proper in this Court, but denies any allegations of wrongdoing contained therein.

4. In answering Paragraph 4 of the Complaint, Defendant admits that this Court has supplemental jurisdiction over Plaintiff's state law claims, but denies any allegations of wrongdoing contained therein.

5. In answering Paragraph 5 of the Complaint, Defendant states that it consists of Plaintiff's request for declaratory relief to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to any relief whatsoever.

III. VENUE

6. In answering Paragraph 6 of the Complaint, Defendant admits that venue is proper in this Court, but denies any allegations of wrongdoing contained therein.

IV. PARTIES

7. In answering Paragraph 7 of the Complaint, Defendant states that it owns and/or operates the Restaurant and that it. is a corporation. Defendant denies each and every remaining allegation contained therein, and specifically denies that "Taco Bell" owns or operates the Restaurant.

8. In answering Paragraph 8 of the Complaint, Defendant is without sufficient information or knowledge to admit or deny the allegations and, therefore, denies each and every allegation contained therein.

V. FACTS

9. In answering Paragraph 9 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant states that it is without sufficient information or knowledge to admit or deny the allegations contained in Paragraph 9 and, therefore, denies each and every allegation contained therein.

10. In answering Paragraph 10 of the Complaint, Defendant is without sufficient information or knowledge to admit or deny the allegations and, therefore, denies each and every allegation contained therein.

11. In answering Paragraph 11 of the Complaint, Defendant is without sufficient information or knowledge to admit or deny the allegations and, therefore, denies each and every allegation contained therein.

12. In answering Paragraph 12 of the Complaint, Defendant denies each and every allegation contained therein.

13. In answering Paragraph 13 of the Complaint, Defendant denies each and every allegation contained therein.

14. In answering Paragraph 14 of the Complaint, Defendant denies each and every allegation contained therein.

15. In answering Paragraph 15 of the Complaint, Defendant denies each and every allegation contained therein.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. In answering Paragraph 16 of the Complaint, Defendant incorporates its responses to Paragraphs 1 through 15 of the Complaint as if fully set forth herein.

17. In answering Paragraph 17 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

18. In answering Paragraph 18 of the Complaint, Defendant denies each and every allegation contained therein.

Failure to Remove Architectural Barriers in an Existing Facility

19. In answering Paragraph 19 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

20. In answering Paragraph 20 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

21. In answering Paragraph 21 of the Complaint, Defendant denies each and every allegation contained therein.

22. In answering Paragraph 22 of the Complaint, Defendant denies each and every allegation contained therein.

Failure to Make an Altered Facility Accessible

23. In answering Paragraph 23 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein.

24. In answering Paragraph 24 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

25. In answering Paragraph 25 of the Complaint, Defendant denies each and every allegation contained therein.

Failure to Make an Altered Facility Accessible

26. In answering Paragraph 26 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies

each and every allegation contained therein.

27. In answering Paragraph 27 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein.

28. In answering Paragraph 28 of the Complaint, Defendant denies each and every allegation contained therein.

Failure to Modify Existing Policies and Procedures

29. In answering Paragraph 29 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

30. In answering Paragraph 30 of the Complaint, Defendant denies each and every allegation contained therein.

31. In answering Paragraph 31 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

32. In answering Paragraph 32 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

VII. SECOND CLAIM

Disabled Persons Act

33. In answering Paragraph 33 of the Complaint, Defendant incorporates its responses to Paragraphs 1 through 32 of the Complaint as if fully set forth herein.

34. In answering Paragraph 34 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced

therein which speaks for itself.

35. In answering Paragraph 35 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

36. In answering Paragraph 36 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

37. In answering Paragraph 37 of the Complaint, Defendant denies each and every allegation contained therein.

38. In answering Paragraph 38 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

39. In answering Paragraph 39 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. In answering Paragraph 40 of the Complaint, Defendant incorporates its responses to Paragraphs 1 through 39 of the Complaint as if fully set forth herein.

41. In answering Paragraph 41 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein.

42. In answering Paragraph 42 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies

each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

43. In answering Paragraph 43 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

44. In answering Paragraph 44 of the Complaint, Defendant denies each and every allegation contained therein.

45. In answering Paragraph 45 of the Complaint, Defendant denies each and every allegation contained therein.

46. In answering Paragraph 46 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

47. In answering Paragraph 47 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public facilities

48. In answering Paragraph 48 of the Complaint, Defendant incorporates its responses to Paragraphs 1 through 47 of the Complaint as if fully set forth herein.

49. In answering Paragraph 49 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

50. In answering Paragraph 50 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies

each and every allegation contained therein, except to refer to the statutory language referenced therein which speaks for itself.

51. In answering Paragraph 51 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein.

52. In answering Paragraph 52 of the Complaint, Defendant states that it consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

Defendant states that the remainder of the Complaint consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint and each purported cause of action asserted against Defendant therein fails to set forth facts sufficient to constitute a claim and/or state a claim upon which relief may be granted.

2. Plaintiff lacks standing to bring the causes of action asserted in her Complaint and, to the extent she has standing to bring her Complaint, Plaintiff lacks standing to challenge any alleged barriers not specifically identified and set forth in her Complaint and/or related to her gender and/or alleged "disability" or "handicap."

3. If Defendant is responsible in any respect for any injuries or damages suffered by Plaintiff, which Defendant expressly denies, such injuries or damages have been caused by or contributed to by others, and Defendant's proportional liability, if any, should be reduced to the extent thereof.

4. The accommodations requested by Plaintiff and/or removal of the alleged structural barriers to access of persons with disabilities are not readily achievable, nor are alternative methods readily achievable, easily accomplishable, technically feasible, would create safety hazards, and/or

result in an undue burden on Defendants and others.

5. Plaintiff's claims are barred by the doctrines of *estoppel* and waiver as Plaintiff failed to take reasonable measures to learn of or use the accessible facilities at the Restaurant. Further, Plaintiff failed to request any adaptations, modifications, alterative services, or other changes to the Restaurant prior to initiating his lawsuit.

6. Plaintiff's claims are barred to the extent they were raised and/or could have been asserted during a prior lawsuit that she brought against the restaurant (Case No. 01 CV 0713 JM (LAB).

7. Defendant did not intentionally impede or impair access to Plaintiff and allege that to the extent any alleged discriminatory conduct occurred, which it did not, that such conduct was not intentional.

8. Plaintiff is not entitled to recover attorneys' fees under the American with Disabilities Act ("ADA") on the grounds that Defendant had already taken measures to address the sought after relief prior to the initiation of Plaintiff's lawsuit.

9. Plaintiff's claims are barred to the extent that she is a vexatious litigant.

Defendant reserves the right to plead any additional Affirmative Defenses as they become known or available during the pendency of this litigation.

CONCLUSION

WHEREFORE, Defendant, Sun Coast Ventures, denies that Plaintiff is entitled to monetary, declaratory or injunctive relief or judgment in any sum whatsoever, and respectfully requests that the Court enter judgment in its favor with costs and reasonable attorneys' fees assessed against Plaintiff, as well as such other and further relief that this Court deems just and proper.

FISHER & PHILLIPS LLP

DATE: August 20, 2008 BY: s/Amy L. Lessa
CHRISTOPHER C. HOFFMAN
AMY L. LESSA
MEGAN WINTER
Attorneys for Defendant Sun Coast Ventures

PROOF OF SERVICE
(C.C.P. § 1013(a) and § 2015.5)

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the within action. I am employed with the law offices of Fisher & Phillips LLP and my business address is 4225 Executive Square, Suite 950, La Jolla, California 92037.

On August 20, 2008, I caused the within document(s) entitled: **ANSWER TO PLAINTIFF'S COMPLAINT AND NOTICE OF AFFIRMATIVE DEFENSES;** to be served on all interested parties in this action by placing [ ] the original / *[X] a true copy* thereof, in a sealed envelope addressed as follows:

Lynn Hubbard, III (SBN 69773)
Scott Lynn Hubbard, IV (SBN 212970)
Disabled Advocacy Group, APLC
12 Williamsburg Lane
Chico, CA 95926
Telephone: (530) 895-3252
Facsimile: (530) 894-8244

Attorneys for Plaintiff

[X] **MAIL** - I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at La Jolla, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

[ ] **BY PERSONAL SERVICE** - Such envelope(s) were delivered by hand to the individuals listed above.

[ ] **STATE** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[X] **FEDERAL** - I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 20, 2008, at La Jolla, California.

MARCIE HAWKINS

SanDiego 34830.1